



## MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen  
*Chair*

Kenita V. Barrow  
*Vice Chair*

**June 1, 2016**

### **Advisory Opinion 16-05-010**

An Office of Human Resources (OHR) employee inquired about how to record information about two public financial disclosure filers who are not included in the personnel database managed by OHR. These persons, who have been filing financial disclosure reports at least since the electronic database was established in 2003, are contract hearing examiners for the Office of Zoning and Administrative Hearings (OZAH). Most of the requirements of the County's ethics law, including financial disclosure, are tied to whether a person is a "public employee." Fundamentally, the question is whether these persons who are providing services to OZAH through contracts are "public employees" subject to the provisions of County's ethics law applicable to County employees.

A "public employee", subject to the County's ethics laws, is defined in 19A-4(m) as including "any person employed by a County agency . . . ." The Commission concludes that the term "public employee" does not include persons who are contractors of the County.<sup>1</sup> The County's ethics law has previously been construed by the Ethics Commission with respect to its application to County contractors. Advisory Opinion No. 04-014, issued January 26, 2005, affirmatively states that "an independent contractor does not fall within the definition of public employee in section 19A-4(m) of the ethics law."

The Commission believes the contract between the County and a contractor should define the relationship with contractors, not the law regulating County employee conduct. With respect to hearing examiners who are independent contractors, financial disclosure could be required pursuant to contract. This would not be financial disclosure under the Public Ethics Law and must be handled separately from the Ethics Commission's financial disclosure system.<sup>2</sup>

The Commission notes the County's financial disclosure law specifically references hearing examiners of the OZAH. Section 19A-17(b)(5) of the ethics law provides that financial

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<sup>1</sup> "Employ" is defined in 19A-4(f) of the ethics law as "engaging in an activity for compensation." The Commission views this definition as applying broadly to various sorts of employment and contractual relationships for purposes of determining what constitutes "outside employment" of a County employee, but not for purposes of expanding the definition of "public employee" to independent contractors of the County.

<sup>2</sup> The State Ethics Commission allows for some contractors to be designated as "Public Officials." See the Memorandum of the State Ethics Commission dated October 1, 2014, subject: Contractual Employees.

disclosure reports are to be filed by “the following public employees . . . each Hearing Examiner in the Office of Zoning and Administrative Hearings.” The Commission concludes that this provision is not an expansion of the definition of Public Employee found in 19A-4(m), but only a listing of those public employees required to file a disclosure. The requirement for “each Hearing Examiner in the Office of Zoning and Administrative Hearings” to file a disclosure is, therefore, limited to those hearing examiners who are public employees.

For the Commission:



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Steven Rosen, Chair